



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2021-0037]

Fifth Extension of the Modified COVID-19 Prioritized Examination Pilot Program for Patent Applications

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: To continue to support the acceleration of innovations in the fight against COVID-19 during the public health emergency, the United States Patent and Trademark Office (USPTO or Office) is extending the modified COVID-19 Prioritized Examination Pilot Program, which provides prioritized examination of certain patent applications.

Requests that are compliant with the pilot program's requirements and are filed on or before February 15, 2023, will be accepted. The USPTO will evaluate whether to further extend the program during this extension period.

DATES: The COVID-19 Prioritized Examination Pilot Program is extended as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], to run until February 15, 2023.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration (571-272-77285, raul.tamayo@uspto.gov).

SUPPLEMENTARY INFORMATION: In 2020, the USPTO published a notice on the implementation of the COVID-19 Prioritized Examination Pilot Program. See COVID-19 Prioritized Examination Pilot Program, 85 FR 28932 (May 14, 2020) (COVID-19 Track One Notice). The pilot program was implemented to support the acceleration of innovations in the fight against COVID-19. The COVID-19 Track One Notice indicated that an applicant may request prioritized examination without payment of the prioritized

examination fee and associated processing fee if: (1) the patent application's claim(s) covered a product or process related to COVID-19, (2) the product or process was subject to an applicable Food and Drug Administration (FDA) approval for COVID-19 use, and (3) the applicant met other requirements noted in the COVID-19 Track One Notice. Since the COVID-19 Track One Notice, the USPTO has modified the pilot program by removing the limit on the number of patent applications that could receive prioritized examination and extending the pilot program four times through notices published in the Federal Register. The most recent notice (87 FR 38714, June 29, 2022) extended the program until December 31, 2022.

As of December 6, 2022, 353 patents had issued from applications granted prioritized status under the pilot program. The average total pendency, from filing date or later submission of a request for continued examination to issue date, for those applications was 348 days. The shortest pendency from filing date to issue date for those applications was 75 days.

The USPTO is further extending the pilot program by setting the expiration date as February 15, 2023. The Office will continue to monitor the state of the current public health emergency and evaluate whether to further extend the program. If the USPTO determines that an additional extension of the pilot program is appropriate, the Agency will publish a subsequent notice to the public.

Unless the pilot program is further extended by a subsequent notice, following the expiration of this extension, the pilot program will be terminated in favor of the Office dedicating its resources to its other prioritized examination programs. Patent applicants interested in expediting the prosecution of their patent application may instead seek to use the Prioritized Examination (Track One) Program. Patent applications accorded prioritized examination under the pilot program will not lose that status merely because the application is still pending after the date the pilot program is terminated but will

instead retain prioritized examination status until that status is terminated for one or more reasons, as described in the COVID-19 Track One Notice.

The Track One Program permits an applicant to have a patent application advanced out of turn (accorded special status) for examination under 37 CFR 1.102(e) if the applicant timely files a request for prioritized (Track One) examination accompanied by the appropriate fees and meets the other conditions of 37 CFR 1.102(e). See § 708.02(b)(2) of the Manual of Patent Examining Procedure (9th ed., rev. 10.2019, June 2020). The current USPTO fee schedule is available at www.uspto.gov/Fees.

The Track One Program does not have the restrictions of the COVID-19 Prioritized Examination Pilot Program regarding the types of inventions for which special status may be sought, as the Track One Program does not require a connection to any particular technology. Moreover, under the Track One Program, an applicant can avoid delays associated with the determination of whether a patent application presents a claim that covers a product or process related to COVID-19 and whether the product or process is subject to an applicable FDA approval for COVID-19 use.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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